

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DANIEL Z. STERN, individually, and as Parent and  
Natural Guardian of SASHA STERN, a minor,

Plaintiffs,

-against-

OXFORD HEALTH PLANS, INC.,

Defendant.  
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CV12-2379 (JFB)(ETB)

**DECLARATION OF MICHAEL H.  
BERNSTEIN IN SUPPORT OF  
DEFENDANT OXFORD HEALTH  
INSURANCE, INC.'S MOTION  
FOR SUMMARY JUDGMENT**

MICHAEL H. BERNSTEIN, declares under penalty of perjury:

1. I am a member of the firm of Sedgwick LLP, attorneys for defendant Oxford Health Insurance, Inc. (hereinafter "Oxford"), in the above action. As such, I am fully familiar with the facts and circumstances in this matter.

2. This Declaration is respectfully submitted in support of Oxford's motion for summary judgment.

3. Annexed hereto as Exhibit "F" is a true and correct copy of Plaintiffs' Complaint dated May 4, 2012.

4. Annexed hereto as Exhibit "G" is a true and correct copy of Oxford's Answer to Complaint dated August 8, 2012.

5. Discovery closed December 5, 2012 pursuant to the Court's so ordered Discovery Plan. (Doc. No. 13). By letter dated January 2, 2013, Oxford timely requested a pre-motion conference to discuss a briefing schedule for its proposed motion for summary judgment. (Doc. No. 15). By letter dated January 10, 2013, Plaintiff responded to Oxford's letter request. On January 16, 2013, the Court held a telephone conference and set the following dates for the proposed motions for summary judgment:

- February 28, 2013<sup>1</sup> – Last day for Oxford to file its motion for summary judgment;
- April 15, 2013 – Last day for Plaintiffs to file opposition to Oxford’s motion and a cross-motion for summary judgment;
- May 6, 2013 – Last day for Oxford to file its reply in further support of its motion for summary judgment and opposition to Plaintiffs’ cross-motion;
- May 20, 2013 – Last day for Plaintiffs to file their reply in further support of their cross-motion for summary judgment; and
- July 11, 2013 at 11:00 A.M. – Oral argument is set for the competing motions for summary judgment.

6. Annexed hereto as Exhibit “H” is a true and correct copy of the second medical reference listed on Bates Stamp Page Stern00293 of the administrative record, which is identified as *American Association Of Clinical Endocrinologists: Clinical Medical Guidelines for Growth Hormone In Adults & Children*, 2003 Update, Endo Pract 2003; 9:65-73.

7. Annexed hereto as Exhibit “I” is a true and correct copy of the eleventh medical reference listed on Bates Stamp Page Stern00293 of the administrative record, which is identified as Vance, Mary Lee; Mauras, Nelly; *Growth Hormone Therapy In Adults And Children*, New England Journal of Medicine, Volume 341, number 16 page 1206-1215.

I declare under penalty of perjury that the foregoing  
is true and correct.

Dated: February 28, 2013

s/ Michael H. Bernstein  
MICHAEL H. BERNSTEIN

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<sup>1</sup> The Docket Entry incorrectly notes that Oxford’s motion must be filed by February 22, 2013. Counsel agree that the date should be February 28, 2013 and left a voicemail message with the Court Clerk confirming that fact on February 27, 2013. The docket order also contains a discovery ruling that does not pertain to this matter. A letter was submitted to the Court on February 28, 2013 requesting that these errors be corrected.

**CERTIFICATE OF SERVICE****CERTIFICATE OF SERVICE**

I, JOHN T. SEYBERT, hereby certify and affirm that a true and correct copy of the attached DECLARATION OF MICHAEL H. BERNSTEIN was served via ECF on this 28th day of February, 2013, upon the following:

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*Attorneys for Plaintiff, Daniel Z. Stern, individually, and as Parent  
and Natural Guardian of Sasha Stern*

Dated: New York, New York  
February 28, 2013

s/John T. Seybert

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JOHN T. SEYBERT (JS-5014)